

CONSULTATION PAPER: PERMITTED DEVELOPMENT RIGHTS FOR FISH FARMING

1. On 11 June 1991, Sir George Young announced the outcome of the Government's consultation exercise on agricultural and forestry permitted development rights. This consultation paper sets out the Government's intentions for permitted development rights for fish farming in inland waters - in other words excluding marine fish farms, and fish farms in estuaries - in England and Wales.

2. The Government has already announced its decisions:-

(i) to withdraw permitted development rights for fish farm excavations and engineering operations in National Parks;

(ii) to treat fish farm buildings in National Parks in the same way as other agricultural buildings, for the purpose of planning controls;

(iii) to bring all fish tanks (cages) in inland waters within planning control, with full planning control in National Parks and permitted development rights elsewhere; and

(iv) to require local planning authorities to consult the National Rivers Authority when dealing with planning applications for fish farms.

3. This consultation paper invites views on the Government's proposals to:

(i) withdraw all permitted development rights (pdrs) under the General Development Order for fish farming on agricultural units of less than 5 hectares, and on parcels of agricultural land of less than 1 hectare on larger units (paragraph 6);

(ii) withdraw the right of registered fish farm businesses to remove minerals from small sites (paragraph 11);

(iii) make the new permitted development rights for floating fish tanks (cages) outside the National Parks subject to the prior notification scheme already announced for farm buildings (paragraph 9);

(iv) require environmental assessment (EA) in connection with trout farming projects likely to have significant environmental effects, and set indicative criteria for floating salmon and trout tanks (cages) and land-based trout farms for EA purposes (paragraphs 14 and 15).

Overall, the Government's aim is to align planning controls over fish farms as closely as possible with planning controls over other forms of agriculture.

Existing permitted development rights for fish farming

4. For the purposes of the planning Acts, farming fish for human consumption counts as agriculture. The existing permitted development rights it enjoys are contained in Part 6 of Schedule 2 to the General Development Order 1988 (the GDO). All fish farms benefit from the general agricultural rights in Class A to carry out building operations, excavations and engineering operations, if the fish are for human consumption. For fish farm business registered under the Diseases of Fish Act 1983, Class C confers additional rights to construct fishponds and carry out other fish farm engineering operations, provided that the area of the site concerned does not exceed 2 hectares.

5. Where Class A agricultural permitted development involves the extraction of minerals, specific planning permission is needed to move them off the land. The removal of minerals under Class C is however exempt from specific planning control, with the object of enabling established fish farms to continue to develop even if they have insufficient land to store minerals extracted in the course of creating fish ponds.

New thresholds and prior notification

6. Following public consultation, the Government has announced that it is to withdraw permitted development rights for agricultural buildings and operations from agricultural units of less than 5 hectares, and from parcels of agricultural land of less than 1 hectare on larger units. The Government proposes similarly to withdraw rights for development in connection with fish farming below these thresholds.

7. Above the thresholds the Government is to introduce new controls over agricultural permitted development. Local planning authorities will be able to request for their prior approval significant details of the siting and appearance of new farm buildings and extensions and alterations, farm roads, and excavations and engineering operations which individually or collectively exceed 0.5 hectares on one site. In England and Wales most buildings used in connection with fish farming are also used for other agricultural purposes. The Government has already announced its intention to treat fish farm buildings in exactly the same way as other agricultural buildings. Except for National Parks and floating fish tanks (cages) - paragraphs 8 and 9 - fish farm development would be treated the same as other agricultural development.

National Parks

8. In its response last December to the House of Commons Agriculture Committee report on fish farming, the Government announced that it would be withdrawing permitted development rights for fish farming operations in the National Parks. It intends to do this by withdrawing all rights for fish farm

excavations and engineering operations there; buildings needed for fish farming would be treated in the same way as other agricultural buildings in National Parks. All references to National Parks in this paper include the Broads.

Floating fish tanks (cages)

9. The Planning and Compensation Bill brings fish tanks (cages) in inland waters (defined in Section 55(4A) of the Town and Country Planning Act 1990) fully within the definition of development. Formerly not all such floating structures (cages) counted as development. In the National Parks these would be subject to full planning control. However, the Government announced during the passage of the Bill that it would introduce permitted development rights for them outside National Parks. In view of the potential effect on the landscape and the environment, the Government proposes to apply to such cages and tanks arrangements similar to the new controls over matters such as siting and appearance of farm buildings.

Class C rights

10. The existence of permitted development rights for fish farm engineering operations in two Classes has caused confusion. For example, some authorities have believed that Class A does not confer any rights for such operations. Moreover the linking of Class C rights to registration of the business under the Diseases of Fish Act has not achieved the objective of limiting these rights to established fish farms. On occasion, registration has been sought before a fish farm has been established simply with the object of attracting permitted development rights. Even where the farm is established, registration can confer Class C rights in relation to sites which are not established. This has created scope for abuse in the removal of minerals without specific planning permission.

11. In the light of the changes referred to in paragraph 6 above the Government sees no continued justification for retaining Class C and proposes to withdraw it. This would mean that an application for planning permission would be needed before removing minerals from a site, whether or not the business is registered and whether the agricultural use is as a fish farm or otherwise. Small fish farms which do not have room to store minerals extracted in the course of creating new fish ponds, and so need to apply for permission, would not in principle be in a different position from horticultural or livestock units of less than 5 hectares, which will need planning permission for their buildings.

Environmental assessment

12. Environmental assessment (EA) is a technique for ensuring that the likely effects of new development are fully understood and taken into account before it is allowed to go ahead. Where EA is required in connection with a planning application, a developer is required to prepare an environmental statement and submit it in conjunction with the application. An Environmental Statement is a publicly available document setting out the

developer's own assessment of the likely environmental effects of the proposed development. EA should provide a basis for better decision-making by the planning authority, and can also be helpful to the developer.

13. The Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 require EA to be carried out before planning permission is granted for salmon farming which is likely to have significant environmental effects. Indicative criteria and thresholds for identification of projects requiring EA are set out in Appendix A to DOE Circular 15/88 (Welsh Office 23/88). So far as salmon farming is concerned it states "Both salmon hatcheries and installations for the rearing of salmon are listed in schedule 2. The need for EA for such developments will depend on the environmental effects generally and also on the particular implications for a river system; however, smaller developments designed to produce less than 100 tonnes of fish a year should not normally require EA."

14. Floating fish tanks (cages) in inland waters are brought fully within the definition of development by the Planning and Compensation Bill (see paragraph 9 above). The Government would welcome views as to whether floating salmon tanks (cages) require different indicative criteria/thresholds from land based salmon farms, and if so what they should be.

15. The Town and Country Planning (Assessment of Environmental Effects) Regulations 1988, implement EC Directive 85/337. The English text of the Directive is less comprehensive than the texts of other languages in referring to the breeding of "salmon" rather than "salmonids", and thus excluding trout. The Planning and Compensation Bill provides for the Secretary of State to make regulations requiring EA of any class of development, and the Government proposes to take the opportunity to require EA also in connection with planning applications for trout farming which is likely to have significant environmental effects. It would welcome views as to whether trout farming requires different indicative criteria/thresholds from salmon farming, and if so what they should be and whether they should be different for floating tanks (cages) and land-based trout farms.

Resource implications

16. The Government's policy is that local authorities' development control activities should be wholly funded by application fees. Planning applications are subject to fees. The Government has announced that a fee (£20 initially) will be payable for notifications under agricultural permitted development rights; it intends that this should similarly apply to fish farming. There are only about 700 freshwater fish farms in England and Wales. It expects the proposals in this consultation paper to have nil net cost for local authorities, and very modest manpower implications, depending on the extent to which the discretion to call for full details of a proposed development are exercised, and on the rate of growth of the fish farming industry.

Conclusions

17. Annex A summarises the intended control regime over freshwater fish farming in England and Wales, in the light of the decisions already announced by the Government and the proposals in this consultation paper. It also summarises other controls over fish farming.

18. Comments are invited on the proposals underlined above and summarised in paragraph 3, and should be sent to Nigel Bayliss, C13/17, Department of the Environment, 2 Marsham Street, London SW1P 3EB by 30 September 1991. It would be helpful if comments could be structured to reflect the subheadings in paragraph 3.

CONTROLS OVER FRESHWATER FISH FARMING IN ENGLAND AND WALES

PLANNING CONTROLS

[following implementation of decisions already announced and consultation paper proposals]

1. A planning application would be required for

(a) all fish farming operations and buildings on land holdings of less than 5 hectares or on parcels of land of less than 1 hectare. In England and Wales most fish farms would be below these thresholds and therefore subject to full planning control;

(b) all fish farm buildings, works or structures for the purposes of accommodating livestock or any plant or machinery arising from engineering operations exceeding 465 square metres;

(c) all fish farm buildings, structures, excavations or works within 400 metres of the curtilage of a protected building to be used for the accommodation of livestock;

(d) all fish farm development within 25 metres of a metalled portion of a trunk or classified road;

(e) all fish farm development involving the extraction and removal of any mineral off the land;

(f) all fish farm excavation or engineering operations involving the deposit of waste material on or under the land brought onto the land from elsewhere;

(g) all fish farm excavations and engineering operations in National Parks;

(h) all floating fish tanks (cages) in National Parks.

[Note: References to fish farming here refer to the production of fish for food or for other purposes.]

Full planning control would apply in the above circumstances and an EA would be required for salmon and trout projects only, if they were likely to have significant environmental effects. The current indicative criteria and thresholds for salmon hatcheries and installations rearing salmon are that the need for EA will depend on the environmental effects generally and also on the particular implications for the river system: however, smaller developments designed to produce less than 100 tonnes of fish a year should not normally require EA.

Local planning authorities would be required to consult the National Rivers Authority when dealing with planning applications for fish farms.

2. Prior notification would be required for

(a) all fish farm buildings below 465 square metres or the extension or alteration of a building which materially affected its external appearance, or which added 10% to its cubic content, or which exceeded its original height;

(b) any fish farm development on land amounting to less than 465 square metres, taking account of any existing buildings or works on the same unit erected or in the course of erection within the preceding 2 years and within 90 metres of the proposed development;

(c) all fish farm roads;

(d) all fish farm excavations and engineering operations which individually or collectively with other excavations and engineering operations for agricultural purposes exceeded 0.5 hectares on one site;

(e) all floating fish tanks (cages) in inland waters outside National Parks.

Under the new controls, planning authorities would be able to consider not only visual aspects, but also the desirability of preserving ancient monuments and their settings, known archaeological sites, the settings of listed buildings, and sites of recognised nature conservation value including SSSIs.

3. EA would not apply to these permitted development rights unless the planning authority imposed an Article 4 Direction. It is unlikely that there will be many floating structures outside National Parks in England and Wales and it is not expected that they will be judged to have significant environmental impact.

[Note: References to fish farming here refers only to the production of fish for food and not for other purposes. Fish farming for other purposes would require a planning application.]

OTHER CONTROLS OVER FISH FARMING

4. Fish farms in England and Wales are subject to the water pollution control provisions of the Water Act 1989. Generally it is an offence to discharge any poisonous, noxious or polluting matter, and any solid waste matter, into inland, ground, coastal or territorial waters without authorisation. Where the NRA considers that polluting matter is in danger of entering, or has entered, controlled waters it is empowered by the Act to carry out works to prevent the entry of the matter, or to remove it and remedy the effects on the waters, including restoring any flora and fauna present before the pollution occurred. The NRA is entitled to recover the costs incurred in carrying out these works from the person responsible for endangering the waters, or causing the pollution.

5. Consent for the discharge of fish farm effluent into controlled waters must be obtained from the NRA. The discharger

must submit an application for a consent to the NRA, supplemented by any other information that the NRA may reasonably require. Notice of an application is normally published. The NRA must consider any representations made before deciding whether or not to grant a discharge consent. It must also take account of its duty under Section 106 of the Water Act to ensure, as far as is practicable, that any quality objectives set for the receiving waters are achieved; and it will also need to take account of the requirements of any relevant EC Directives, such as those relating to the discharge of dangerous substances, or the quality required of certain waters used for particular purposes eg for the support of freshwater fish.

6. The NRA is under a statutory duty to exercise its powers so as to further the conservation of flora and fauna. The Code of Practice, Access and Recreation which the Government published in July 1989 encourages the NRA both in issuing discharge consents and in operating its own fish farms, to take steps to ensure that abstraction for, and effluents from, fish farms do not damage flora and fauna, features of archaeological, architectural or historic interest, or the landscape. It should consult conservation bodies about any practice carried out for the improvement or development of a site of importance for conservation. In such circumstances, even standard techniques such as mechanical weed cutting, use of herbicides, the employment of noxious substances for fisheries management, the use of antifouling paints and intensive stocking should be carefully evaluated for environmental impact.

7. Under the Water Act 1989, the NRA is responsible for water abstraction and impoundment licensing. This relates to all abstractions of over 20 cubic metres a day. It is unlikely that economically viable fish farms producing fish for food would be able to avoid the need to seek an abstraction licence.

8. The use of medicines in fish farming is controlled under the Medicines Act 1968. It is the Government's practice to assess veterinary medicines not only to meet the safety, quality and efficacy criteria laid down in the Act but also, where relevant, to evaluate potential environmental impact. In order for this to be done, the Veterinary Products Committee takes into account expert advice from bodies such as the Health and Safety Executive, and, where appropriate, aquatic scientists and the Water Research Centre.

9. The use of pesticides are separately controlled under the Food and Environment Protection Act 1985 but the principles are similar. Ministers must be satisfied before giving approval for the sale, supply, use, storage or advertisement of a pesticide. To obtain approval for a new pesticide, manufacturers are required to provide a range of scientific data which are subjected to rigorous scrutiny by independent experts of the Advisory Committee on Pesticides (ACP). Such assessments include possible effects on the environment, including soil, water and wildlife. An approval, when given, will specify the conditions of use of the pesticide and the exact instructions which must appear on the label, including any statements about environmental protection. In addition, these controls impose a general

obligation of all persons who use pesticides to "take all reasonable precautions to safeguard the environment, and in particular, to avoid the pollution of water".

10. Ministers have powers under the Import of Live Fish (England and Wales) Act 1980 to make orders which forbid either absolutely or except under licence the import, keeping or release of live fish or shellfish of a species which is not native to England and Wales and which in their opinion might compete with, displace, prey on or harm the habitat of any freshwater fish, shellfish or salmon. Following the Wildlife and Countryside Act 1981 it is an offence under Section 14 to release into the wild any non-native species of fish and shellfish unless licensed by the Minister of Agriculture, Fisheries and Food. Licences have been granted for the release of certain species after consultation with the Nature Conservancy Council.